

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN CHARLES KOEHLER,

Petitioner,

v.

JEFFREY BEARD, et al.,

Respondents.

Civil Action No. 08-156 Erie

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on May 21, 2008 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation, filed on January 30, 2009 [11], recommends that the Respondents' motion to dismiss [7] be granted, that the Petition for Writ of Habeas Corpus be dismissed as untimely, and that a certificate of appealability be denied. The parties were allowed ten (10) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI Cresson, where he is incarcerated, and on Respondents. Objections were filed by Petitioner on February 17, 2009 [12]. After de novo review of the petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 26th day of February, 2009;

IT IS HEREBY ORDERED that the Respondents' motion [7] to dismiss be, and hereby is, GRANTED and the Petition for Writ of Habeas Corpus is dismissed as untimely. IT IS FURTHER ORDERED that no certificate of appealability shall issue inasmuch as the Petitioner has failed to make a substantial showing of the denial of a

constitutional right. 28 U.S.C. § 2253(c).

The Report and Recommendation of Chief Magistrate Judge Baxter, dated January 30, 2009 [11], is adopted as the opinion of the Court.

/s Sean J. McLaughlin
 SEAN J. McLAUGHLIN
 United States District Judge

cm: All parties of record.
 Chief U.S. Magistrate Judge Susan Paradise Baxter